

**SYNOPSIS OF THE ONE CRIMINAL (YOUTH COURT) OPINION IN THE
MISSISSIPPI SUPREME COURT HANDED DOWN JUNE 17, 2010**

In The Interest of C.K.B., A Minor v. Harrison County Youth Court, No.2009-CA-01004-SCT
(Miss. June 17, 2010)

CRIME: Youth Court - Burglary

SENTENCE: Adjudicated a Delinquent and placed in Oakley Training School

COURT: Harrison County Youth Court

TRIAL JUDGE: Hon. Michael H. Ward

APPELLANT ATTORNEY: Oliver E. Diaz, Jr., Vanessa Judith Carroll, Sheila Anne Bedi

APPELLEE ATTORNEY: Herbert Wayne Wilson

DISPOSITION: Reversed and Rendered. Graves, P.J., for the Court. Waller, C.J., Carlson, P.J., Lamar, Kitchens, Chandler and Pierce, JJ., Concur. Dickinson, J., Concurs in Result Only. Randolph, J., Not Participating.

ISSUES: (1) Did the youth court erred in finding C.B.'s Motion for Release and Stay of Detention Pending Appeal was a duplicative motion, therefore ordering sanctions, (2) Did the youth court err in failing to grant a directed verdict, and (3) Whether the prosecutor improperly admitted a previously undisclosed confession.

FACTS: C.B. and three others were accused of an April 2009 burglary. A video surveillance camera showed 4 individuals in the vicinity of the house. Two of the individuals jumped the fence into a back yard and approached the back door. After apparently kicking in the door, the two jumped back over the fence and met up with one individual. None of the individuals could be identified from the video. After the victim's son possibly identified one of the boys, M.T., police began looking for him. They went to Stannevia Pritchett's residence and arrested Pritchett, M.T., C.B., and C.H. Authorities seized clothing which matched the clothes worn by the persons in the video with the exception of C.B. On May 14, 2009, C.B. filed a Petition to Admit based upon an indication from the youth-court counselor that she would recommend probation if he admitted the burglary charge. Counsel for C.B. subsequently filed a motion to set the case. A hearing was held on May 21, 2009. The court set the adjudicatory hearing for June 22, 2009, and summarily denied a request for release pending the hearing. Counsel for C.B. filed a notice of appeal pursuant to §43-21-651(1) and MRAP Rule 3(a), along with a motion for release and a stay of detention pending appeal, seeking to appeal with supersedeas. After a hearing, the court denied the motion and imposed sanctions against C.B., his mother, and his counsel, finding the motions were duplicative to what he had already ruled on. After filing an amended notice of appeal, counsel filed an emergency motion for a stay pending appeal in the SCT. The SCT ordered the youth court judge to respond. However, after discovering the youth court would not agree to probation, C.B. elected to dispute the charge. On June 22, 2009, the youth court adjudicated C.B. a delinquent child and he was subsequently sent to Oakley.

HELD: The youth court judge erred in imposing sanctions for what he believed to be violations of

his prior order regarding duplicative filings. The imposition of sanctions was in the nature of a finding of direct criminal contempt. Although the youth court indicated that it warned C.B.'s counsel in other, unrelated cases about filing duplicative motions, in C.B.'s case, counsel essentially filed two motions. A Motion to Set Case for Adjudication and Disposition and Release the Minor from Detention was filed on May 15, 2009. On May 29, 2009, counsel filed a notice of appeal of the denial of this motion pursuant to §43-21-651(1) and MRAP Rule 3(a), and a Motion for Release and Stay of Detention Order Pending Appeal, seeking to appeal with supersedeas.

==>C.B.'s first motion sought to enforce the statutorily-imposed requirement that his adjudicatory hearing be scheduled within 21 days. In the second motion, C.B. indicated his intent to appeal with supersedeas. Attached as exhibits to this motion were the declarations of counsel, C.B., and C.B.'s mother, indicating that C.B. had never asked for nor agreed to any continuance. The rules required counsel to present the motion first to the trial court before appeal.

==>“The record in this matter does not indicate any basis for a finding of direct criminal contempt. “The youth court sanctioned a *child*, his mother and his counsel for an alleged violation of the court's directive in *other, unrelated cases*. The alleged violation in this case was the filing of *two* motions pursuant to statutory authority seeking to prevent a child from being detained for some seventy-six days pending his final adjudication. C.B. was required under both the applicable statute and rule to first seek relief in the youth court....Reasonable diligence in the zealous representation of a juvenile is not a viable basis for either contempt or Rule 11 sanctions.”[emphasis supplied]

==>The youth court also erred in failing to direct a verdict. The only evidence of C.B.'s presence in the vicinity of the home was an officer's testimony that C.B. was one of the individuals merely walking down the street. However, he admitted that he could not identify the faces of any of the four individuals in the first portion of the video. He said he identified C.B. by clothing, but had only a general idea of what the person he identified as C.B. appeared to be wearing. Police did not specifically identify or confiscate any clothing from C.B. Most importantly, C.B. was not identified as one of the individuals who had jumped the fence and kicked in the door.

==>The police report indicated only C.H. admitted culpability. However, over objection of counsel at trial, an officer testified that C.B. and M.T., but not C.H., had admitted culpability. The officer testified that he failed to obtain a written waiver of rights from C.B, and although he spoke with C.B.'s mother, he neither remembered her name nor made any written note that she consented to his questioning of C.B. Further, C.B. allegedly gave a statement admitting culpability that police knew was contradictory to the only evidence, i.e., the video. Even if the statement had been admissible, it was insufficient to support an adjudication under §43-21-559(2) as it was uncorroborated.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63720.pdf>

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